

May 28, 2003

Christine T. Whitman, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
Mail Code 1101A  
1200 Pennsylvania Avenue, NW  
Washington, D.C.

Re: The Ferroalloys Association Petition for Rulemaking (August 1, 2001), as supplemented and amended

Dear Administrator Whitman:

On August 1, 2001, The Ferroalloys Association ("TFA"), acting through its Spent Catalyst Committee, filed a Petition for Rulemaking, seeking to correct serious deficiencies in the land disposal restrictions ("LDR") pertaining to disposal of spent hydroprocessing catalyst, EPA listed waste K171 and K172. Later, members of TFA recognized in the field that the nature and extent of the problems caused by the LDR deficiencies were both more severe and to some extent different than described in the original Petition, so TFA filed a Supplement to Petition for Rulemaking on April 3, 2002. We understand that these documents and other relevant supporting information are under active review by your staff. I am writing to alert you and your staff of two important points relevant to review of the petition.

First, the five members of the TFA Spent Catalyst Committee have reorganized into the Vanadium Producers and Reclaimers Association ("VPRA"). Accordingly, please substitute VPRA for TFA as the petitioner in this matter.

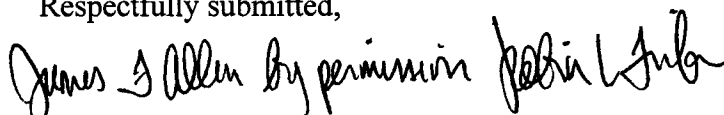
Second, it has come to our attention that your staff may be misinterpreting one point in the petition. The original petition requested that the LDR for listed waste F037 be amended to include the toxic parameters for spent catalyst. F037 is the generic listed waste from treatment of oil-bearing residuals ("OBR") at refineries. These OBR are generally excluded from the definition of solid waste if they are recycled back into a refinery process. However, developments in the field led petitioners to discover that (1) EPA never considered spent catalyst when it adopted the exclusion; (2) refineries intended to take advantage of the exclusion to ship spent catalyst without regulation from refinery to refinery for treatment; and (3) at least

one refinery was attempting to delist F037 derived in part from partial treatment of spent catalyst, without considering the unique and different properties of spent catalyst.

As a result, TFA submitted its Supplement to Petition for Rulemaking, where it emphasized these problems, and showed EPA that they would not be solved simply by adding a few parameters to the LDR for F037. Instead, TFA urged EPA to adopt a requirement that all spent catalyst, whether K171/K172 or F037, be treated either by (i) reclamation, or (ii) high temperature or chemical oxidation followed by metals reclamation. TFA further emphasized these points in its comments on EPA's proposal to expand the OBR exclusion to cover materials sent to gasifiers (RCRA Docket No. F-2002-RPRP-FFFFF, TFA Comments (September 10, 2002), esp. pp. 4-7).

We fear that your staff may not fully appreciate our position and its rationale on this point, and we intend to meet with them to discuss this important issue in detail as soon as possible. In the meantime, please accept this brief explanation as clarification that VPRA does not believe EPA considered spent catalyst to be in the scope of wastes subject to the OBR exclusion, and the problems identified in the petition with disposal of inadequately treated spent catalyst will not be mitigated by adding toxic parameters to the LDR for F037.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James F. Allen by permission John Hilbert".

James F. Allen

Counsel for Vanadium Producers and Reclaimers  
Association

Cc: Robert Dellinger, US EPA

John Hilbert, Vanadium Producers and Reclaimers Association

JFA/lag